

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON CATTLEMEN'S  
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; ANDREW  
WHEELER, in his official capacity as  
Administrator of the United States Environmental  
Protection Agency; UNITED STATES ARMY  
CORPS OF ENGINEERS; and R.D. JAMES, in  
his official capacity as Assistant Secretary for  
Civil Works, Department of the Army,

Defendants.

Case No. 2:19-cv-00569-JCC

PROPOSED ANSWER OF PROPOSED  
INTERVENOR-DEFENDANTS

Pursuant to Federal Rule of Civil Procedure 8, the Puget Soundkeeper Alliance, Sierra Club, and Idaho Conservation League (the "Clean Water Groups") respectfully submit this Answer to the Plaintiff's Complaint in the above-captioned action. Dkt. # 1.

The headings and subheadings in the Complaint do not contain allegations that require a response. To the extent a response is required, the Clean Water Groups deny the allegations

1 contained in the headings and subheadings.

## 2 INTRODUCTION

3 1. The first sentence of Paragraph 1 characterizes the contents of the Complaint,  
 4 which is the best evidence of its contents. Any allegations contrary to the Complaint's plain  
 5 language and meaning are denied. The second, third, and fourth sentences of Paragraph 1  
 6 characterize provisions of the Clean Water Act, which is the best evidence of its contents. Any  
 7 allegations contrary to the Clean Water Act's plain language and meaning are denied. Clean  
 8 Water Groups admit that the Environmental Protection Agency ("EPA") and Army Corps of  
 9 Engineers ("Corps") adopted joint regulations in 1986, and that EPA and the Corps replaced the  
 10 1986 regulations with a new regulation in 2015. To the extent the fifth and sixth sentences of  
 11 Paragraph 1 characterize provisions of federal regulations for implementing the Clean Water  
 12 Act, the federal regulations are the best evidence of their contents. Any allegations contrary to  
 13 the federal regulations' plain language and meaning are denied. Clean Water Groups admit the  
 14 allegations in the seventh sentence of Paragraph 1. Clean Water Groups lack knowledge or  
 15 information sufficient to form a belief as to the truth of the allegations in the eighth sentence of  
 16 Paragraph 1, and therefore denies those allegations. The ninth and tenth sentences of Paragraph  
 17 1 characterize the contents of the Complaint, which is the best evidence of its contents. Any  
 18 allegations contrary to the Complaint's plain language and meaning are denied.

## 19 JURISDICTION AND VENUE

- 20 2. Paragraph 2 contains conclusions of law to which no response is required.
- 21 3. Paragraph 3 contains conclusions of law to which no response is required.
- 22 4. Paragraph 4 contains conclusions of law to which no response is required.
- 23 5. Paragraph 5 contains conclusions of law to which no response is required.
- 24

7. Clean Water Groups lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint, and therefore deny those allegations.

9. Clean Water Groups admit that Andrew Wheeler is the Administrator of the EPA and that his predecessor Gina McCarthy signed the “Clean Water Rule: Definition of ‘Waters of the United States’” (“2015 Clean Water Rule”) on behalf of EPA on June 29, 2015.

11. Clean Water Groups admit that R.D. James is the Assistant Secretary of the Army for Civil Works and that his predecessor Jo-Ellen Darcy signed the 2015 Clean Water Rule on behalf of the Corps on June 29, 2015.

12. Paragraph 12 contains conclusions of law to which no response is required. The third sentence of Paragraph 12 contains a quotation from a published court decision. That court

1 decision speaks for itself and is the best evidence of its contents, and therefore the excerpted  
2 quotation in the third sentence of Paragraph 12 requires no response.

3 13. Paragraph 13 characterizes provisions of the Rivers and Harbors Act, which is the  
4 best evidence of its contents. Any allegations contrary to the Rivers and Harbors Act's plain  
5 language and meaning are denied.

6 14. Paragraph 14 characterizes provisions of the Clean Water Act, which is the best  
7 evidence of its contents. Any allegations contrary to the Clean Water Act's plain language and  
8 meaning are denied.

9 15. Paragraph 15 characterizes provisions of the Rivers and Harbors Act and the  
10 Clean Water Act, which are the best evidence of their contents. Any allegations contrary to  
11 those statute's plain language and meaning are denied.

12 16. Paragraph 16 characterizes provisions of the Clean Water Act and the Flood  
13 Control Act of 1936, which are the best evidence of their contents. Any allegations contrary to  
14 those statutes' plain language and meaning are denied. The remainder of paragraph 16 contains  
15 citations to a legislative history and a published court decision, which are the best evidence of  
16 their contents. Any allegations contrary to the legislative history and court decision's plain  
17 language and meaning are denied.

18 17. Paragraph 17 characterizes provisions of the Clean Water Act, which is the best  
19 evidence of its contents. Any allegations contrary to the Clean Water Act's plain language and  
20 meaning are denied.

21 18. Paragraph 18 characterizes published court decisions, which are the best evidence  
22 of their contents. Any allegations contrary to the court decisions' plain language and meaning  
23 are denied.

1           19. Paragraph 19 characterizes provisions of federal regulations for implementing the  
2 Clean Water Act, which are the best evidence of their contents. Any allegations contrary to the  
3 federal regulations' plain language and meaning are denied.

4           20. Paragraph 20 characterizes a published court decision, which is the best evidence  
5 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
6 denied.

7           21. Paragraph 21 characterizes provisions of federal regulations for implementing the  
8 Clean Water Act, which are the best evidence of their contents. Any allegations contrary to the  
9 federal regulations' plain language and meaning are denied.

10          22. Paragraph 22 characterizes provisions of federal regulations implementing the  
11 Clean Water Act, which are the best evidence of their contents. Any allegations contrary to the  
12 federal regulations' plain language and meaning are denied.

13          23. Paragraph 23 characterizes a published court decision, which is the best evidence  
14 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
15 denied.

16          24. Paragraph 24 characterizes a published court decision, which is the best evidence  
17 of its contents. Any allegations contrary to the plain language and meaning are denied.

18          25. Paragraph 25 characterizes a published court decision, which is the best evidence  
19 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
20 denied.

21          26. Paragraph 26 characterizes a published court decision, which is the best evidence  
22 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
23 denied.

1           27. Paragraph 27 characterizes a published court decision, which is the best evidence  
2 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
3 denied.

4           28. Paragraph 28 characterizes federal agency guidance under the Clean Water Act,  
5 which is the best evidence of its contents. Any allegations contrary to the federal guidance's  
6 plain language and meaning are denied.

7           29. Paragraph 29 characterizes federal agency guidance under the Clean Water Act,  
8 which is the best evidence of its contents. Any allegations contrary to the federal guidance's  
9 plain language and meaning are denied. To the extent Paragraph 29 contains conclusions of law,  
10 no response is required. To the extent Paragraph 29 is deemed to contain allegations of fact,  
11 Clean Water Groups deny those allegations.

12           30. Paragraph 30 characterizes federal agency guidance under the Clean Water Act,  
13 which is the best evidence of its contents. Any allegations contrary to the federal guidance's  
14 plain language and meaning are denied.

15           31. Paragraph 31 characterizes federal agency guidance under the Clean Water Act,  
16 which is the best evidence of its contents. Any allegations contrary to the federal guidance's  
17 plain language and meaning are denied.

18           32. Paragraph 32 characterizes provisions of federal regulations implementing the  
19 Clean Water Act, which are the best evidence of their contents. Any allegations contrary to the  
20 federal regulations' plain language and meaning are denied.

21           33. Paragraph 33 characterizes provisions of federal regulations implementing the  
22 Clean Water Act, which are the best evidence of their contents. Any allegations contrary to the  
23 federal regulations' plain language and meaning are denied.

1           34. Paragraph 34 characterizes a provision of federal regulations implementing the  
2 Clean Water Act, which is the best evidence of its contents. Any allegations contrary to the  
3 federal regulations' plain language and meaning are denied.

4           35. Paragraph 35 characterizes a provision of federal regulations implementing the  
5 Clean Water Act, which is the best evidence of its contents. Any allegations contrary to the  
6 federal regulations' plain language and meaning are denied.

7           36. Paragraph 36 characterizes a provision of federal regulations implementing the  
8 Clean Water Act, which is the best evidence of its contents. Any allegations contrary to the  
9 federal regulations' plain language and meaning are denied.

10          37. Paragraph 37 characterizes a provision of federal regulations implementing the  
11 Clean Water Act, which is the best evidence of its contents. Any allegations contrary to the  
12 federal regulations' plain language and meaning are denied.

13          38. Paragraph 38 characterizes a comment letter submitted by Plaintiff, which is the  
14 best evidence of its contents. Any allegations contrary to the comment letter's plain language  
15 and meaning are denied. Clean Water Groups admit Plaintiff submitted substantive comments to  
16 EPA and the Corps during the public comment period for the 2015 Clean Water Rule.

17          39. Paragraph 39 contains conclusions of law to which no response is required.

18          40. Clean Water Groups admit that Plaintiff previously filed suit to challenge the  
19 2015 Clean Water Rule in the U.S. District Court for the District of Minnesota on July 15, 2015,  
20 case number 0:15-cv-03058-DWF-LIB.

21          41. Paragraph 41 characterizes a published court decision, which is the best evidence  
22 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
23 denied. Clean Water Groups admit that the District Court for the District of Minnesota  
24

1 dismissed a complaint captioned *Washington Cattlemen's Association v. EPA*, case no. 0:15-cv-  
2 03058-DWF-LIB, on November 8, 2016, without prejudice.

3 42. Clean Water Groups admit that Plaintiff filed a petition against the 2015 Clean  
4 Water Rule in the Sixth Circuit at Petition No. 15-4188. The remainder of Paragraph 42 contains  
5 vague and ambiguous allegations regarding the 2015 rule defining the term "waters of the United  
6 States," and therefore requires no response.

7 43. Clean Water Groups admit that on October 9, 2015 the Sixth Circuit stayed the  
8 2015 Clean Water Rule. Clean Water Groups admit that the 2015 Clean Water Rule was the rule  
9 in effect in Washington between August 28, 2015, the rule's effective date, and October 9, 2015,  
10 the date on which the Sixth Circuit stayed the rule, but to the extent this paragraph refers to the  
11 legal status quo in Washington, the characterization is a vague allegation to which no response is  
12 required.

13 44. Paragraph 44 characterizes a published court decision, which is the best evidence  
14 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
15 denied.

16 45. Clean Water Groups admit that the Sixth Circuit dissolved its nationwide stay and  
17 dismissed Plaintiff's petition challenging the 2015 Clean Water Rule on February 28, 2018.

18 46. Clean Water Groups admit that following the Supreme Court's decision in  
19 *National Association of Manufacturers*, litigation has resumed against the 2015 Clean Water  
20 Rule in multiple district courts across the country.

21 47. Paragraph 47 characterizes two published court decisions, which are the best  
22 evidence of their contents. Any allegations contrary to the court decisions' plain language and  
23 meaning are denied.



1           48.     Clean Water Groups admit that no court has enjoined the 2015 Clean Water Rule  
2 in the state of Washington.

3           49.     Paragraph 49 characterizes a provision of federal regulations implementing the  
4 Clean Water Act, which is the best evidence of its contents. Any allegations contrary to the  
5 federal regulations' plain language and meaning are denied.

6           50.     Clean Water Groups admit that multiple groups of litigants filed suit against the  
7 Applicability Date Rule. The second sentence of Paragraph 50 characterizes two published court  
8 decisions, which are the best evidence of their contents. Any allegations contrary to the court  
9 decisions' plain language and meaning are denied. Clean Water Groups admit that the EPA and  
10 the Corps abandoned their appeals from those orders.

11           51.     Clean Water Groups lack information or knowledge sufficient to form a belief as  
12 to the truth of the allegations in Paragraph 51 of the Complaint, and therefore denies those  
13 allegations.

14           52.     Paragraph 52 characterizes a proposed federal regulation which is the best  
15 evidence of its contents. Any allegations contrary to the federal regulation's plain language and  
16 meaning are denied. Clean Water Groups admit that the agencies have not yet issued a final  
17 Repeal and Recodify Rule.

18           53.     Paragraph 53 characterizes a proposed federal regulation which is the best  
19 evidence of its contents. Any allegations contrary to the federal regulation's plain language and  
20 meaning are denied.

21           54.     Paragraph 54 contains conclusions of law to which no response is required.

22           55.     Paragraph 55 characterizes a federal regulation implementing the Clean Water  
23 Act and federal agency guidance under the Clean Water Act, which are the best evidence of their  
24

1 contents. Any allegations contrary to the federal regulation and guidance's plain language and  
2 meaning are denied. To the extent Paragraph 55 contains conclusions of law, no response is  
3 required. To the extent Paragraph 55 is deemed to contain allegations of fact, Clean Water  
4 Groups deny those allegations.

5 56. Paragraph 56 contains conclusions of law to which no response is required.

6 57. Paragraph 57 contains conclusions of law to which no response is required.

7 58. Paragraph 58 characterizes plaintiff's future intents regarding the Complaint, to  
8 which no response is required.

9 59. Clean Water Groups incorporate by reference the above responses to Paragraphs  
10 1-58.

11 60. Paragraph 60 contains vague and ambiguous allegations regarding the 2015 Clean  
12 Water Rule, and therefore requires no response. To the extent Paragraph 51 contains conclusions  
13 of law, no response is required.

14 61. Paragraph 61 characterizes the contents of the Complaint, which is the best  
15 evidence of its contents. Any allegations contrary to the Complaint's plain language and  
16 meaning are denied. To the extent Paragraph 61 is deemed to contain conclusions of law, no  
17 response is required.

18 62. Clean Water Groups lack information or knowledge sufficient to form a belief as  
19 to the truth of the allegations in Paragraph 62 of the Complaint, and therefore denies those  
20 allegations. To the extent Paragraph 62 is deemed to contain conclusions of law, no response is  
21 required.

22 63. Paragraph 63 contains conclusions of law to which no response is required.  
23  
24

64. Clean Water Groups incorporates by reference the above responses to Paragraphs 1-63.

65. Paragraph 65 contains vague and ambiguous allegations regarding the impacts of the 2015 Clean Water Rule, and therefore requires no response. To the extent they are inconsistent with the Rule or the relevant law, Clean Water Groups deny the allegations in Paragraph 65. To the extent Paragraph 65 characterizes the 2015 Clean Water Rule, it is the best evidence of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

66. Clean Water Groups lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 66 of the Complaint, and therefore denies those allegations.

67. Clean Water Groups lack information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 67 of the Complaint, and therefore deny those allegations.

68. Paragraph 68 contains conclusions of law to which no response is required.

69. Paragraph 69 contains conclusions of law to which no response is required.

#### **FIRST CLAIM FOR RELIEF**

70. Clean Water Groups incorporate by reference the above responses to Paragraphs 1-69.

71. Paragraph 71 characterizes the Clean Water Act, which is the best evidence of its contents. Any allegations contrary to the Clean Water Act's plain language and meaning are denied.

1           72. Paragraph 72 characterizes the 2015 Clean Water Rule, which is the best evidence  
2 of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

3           73. Paragraph 73 characterizes a published court decision, which is the best evidence  
4 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
5 denied.

6           74. Paragraph 74 contains conclusions of law to which no response is required.

7  
8                                   **SECOND CLAIM FOR RELIEF**

9           75. Clean Water Groups incorporate by reference the above responses to Paragraphs  
10 1-74.

11           76. Paragraph 76 contains conclusions of law to which no response is required. To  
12 the extent Paragraph 76 characterizes a published court decision, it is the best evidence of its  
13 contents. Any allegations contrary to the court decision's plain language and meaning are  
14 denied.

15           77. Paragraph 77 characterizes the 2015 Clean Water Rule, which is the best evidence  
16 of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

17           78. Paragraph 78 contains conclusions of law to which no response is required.

18                                   **THIRD CLAIM FOR RELIEF**

19           79. Clean Water Groups incorporate by reference the above responses to Paragraphs  
20 1-78.

21           80. Paragraph 80 characterizes the 2015 Clean Water Rule, which is the best evidence  
22 of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

23           81. Paragraph 81 contains conclusions of law to which no response is required. To  
24 the extent Paragraph 81 characterizes a published court decision, it is the best evidence of its

1 contents. Any allegations contrary to the court decision's plain language and meaning are  
2 denied.

3 82. Paragraph 82 contains conclusions of law to which no response is required.

4  
5 **FOURTH CLAIM FOR RELIEF**

6 83. Clean Water Groups incorporate by reference the above responses to Paragraphs  
7 1-82.

8 84. Paragraph 84 characterizes the 2015 Clean Water Rule, which is the best evidence  
9 of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

10 85. Paragraph 85 contains conclusions of law to which no response is required. To  
11 the extent Paragraph 85 characterizes a published court decision, it is the best evidence of its  
12 contents. Any allegations contrary to the court decision's plain language and meaning are  
13 denied.

14 86. Paragraph 86 contains conclusions of law to which no response is required.

15 **FIFTH CLAIM FOR RELIEF**

16 87. Clean Water Groups incorporate by reference the above responses to Paragraphs  
17 1-86.

18 88. Paragraph 88 contains conclusions of law to which no response is required.

19 89. Paragraph 89 characterizes the 2015 Clean Water Rule, which is the best evidence  
20 of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

21 90. Paragraph 90 characterizes the 2015 Clean Water Rule, which is the best evidence  
22 of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

23 91. Paragraph 91 characterizes the 2015 Clean Water Rule, which is the best evidence  
24 of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

1           92. Paragraph 92 characterizes the 2015 Clean Water Rule, which is the best evidence  
2 of its contents. Any allegations contrary to the Rule's plain language and meaning are denied.

3           93. Paragraph 93 contains conclusions of law to which no response is required.

4  
5                                   **SIXTH CLAIM FOR RELIEF**

6           94. Clean Water Groups incorporate by reference the above responses to Paragraphs  
7 1-93.

8           95. Paragraph 95 characterizes a published court decision, which is the best evidence  
9 of its contents. Any allegations contrary to the court decision's plain language and meaning are  
10 denied.

11           96. Paragraph 96 characterizes the 2015 Clean Water Rule and the Constitution,  
12 which are the best evidence of their contents. Any allegations contrary to the Rule and  
13 Constitution's plain language and meaning are denied.

14           97. Paragraph 97 contains conclusions of law to which no response is required.

15                                   **SEVENTH CLAIM FOR RELIEF**

16           98. Clean Water Groups incorporate by reference the above responses to Paragraphs  
17 1-97.

18           99. Paragraph 99 characterizes two published court decisions, which are the best  
19 evidence of their contents. Any allegations contrary to the court decisions' plain language and  
20 meaning are denied.

21           100. Paragraph 100 characterizes the 2015 Clean Water Rule and a published court  
22 decision, which are the best evidence of their contents. Any allegations contrary to the Rule's  
23 plain language and meaning are denied.

24           101. Paragraph 101 contains conclusions of law to which no response is required.

**EIGHTH CLAIM FOR RELIEF**

102. Clean Water Groups incorporate by reference the above responses to Paragraphs 1-101.

103. Paragraph 103 characterizes the Clean Water Act, which is the best evidence of its contents. Any allegations contrary to the Clean Water Act's plain language and meaning are denied.

104. Paragraph 104 characterizes two published court decisions, which are the best evidence of their contents. Any allegations contrary to the court decisions' plain language and meaning are denied.

105. Paragraph 105 characterizes the Clean Water Act, which is the best evidence of its contents. Any allegations contrary to the Clean Water Act's plain language and meaning are denied.

106. Paragraph 106 contains conclusions of law to which no response is required.

107. Paragraph 107 contains conclusions of law to which no response is required.

**PRAYER FOR RELIEF**

1. The remainder of plaintiff's Complaint constitutes its requests for relief to which no response is required. Clean Water Groups aver that plaintiff is not entitled to relief on its claims for relief, and the Court should dismiss those claims with prejudice.

**GENERAL DENIAL**

To the extent that any factual allegation in the Complaint has not been admitted or specifically responded to above, Clean Water Groups deny such allegation.

**DEFENSES**

1           1.     The Court lacks jurisdiction over some or all of Plaintiff's claims.

2           2.     Plaintiff has failed to state a claim for which relief can be granted with respect to  
3 one or more of the claims set forth in the Complaint.

4           3.     Plaintiff lacks standing with respect to one or more of the claims set forth in the  
5 Complaint.

6           4.     One or more of the claims set forth in the Complaint is not ripe for adjudication.

7           5.     Clean Water Groups reserve the right to raise any defense, including, but not  
8 limited to, those expressly found in Federal Rules of Civil Procedure 8(c) and 12, that may be  
9 supported by the record in this action.

10  
11           Respectfully submitted this 25th day of June, 2019.

12  
13                               /s/ Janette K. Brimmer

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17                               /s/ Jennifer C. Chavez

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22                               /s/ Anna M. Sewell

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6 *Puget Soundkeeper Alliance, Sierra Club, and*  
7 *Idaho Conservation League*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Janette K. Brimmer  
Janette K. Brimmer